

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

Civil Action No.: 3:19-cv-00237-FDW-DCK

R. ALEXANDER ACOSTA,
Secretary of Labor,
United States Department of Labor,

Plaintiff,

vs.

HOT TACO, LLC, d/b/a HOT TACO,

Defendant.

ANSWER

The Defendant, Hot Taco, LLC, hereby responds to Plaintiff's Complaint (Doc. No. 1), as follows:

As to the unnumbered first paragraph of the Complaint, it is admitted that Plaintiff through this action seeks relief under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201, *et seq.*, the "FLSA"). It is denied that Plaintiff is entitled to any relief under the FLSA or under any other provisions of law. Except as expressly admitted, the remainder of the allegations in the unnumbered first paragraph of the Complaint are denied.

I. As to Paragraph I, it is admitted that 29 U.S.C. § 217 and 28 U.S.C. §§ 1331 and 1345 provide a jurisdictional basis for Plaintiff to assert its claims before this Court, which claims are denied. Except as expressly admitted, Paragraph I is denied.

II(A). As to Paragraph II(A), it is admitted that Defendant is a North Carolina limited liability company having a place of business and doing business in Charlotte, North Carolina. Except as admitted, Paragraph II(A) is denied.

III(A). The allegations of Paragraph III(A) are denied as calling for legal conclusions.

III(B). The allegations of Paragraph III(B) are denied as calling for legal conclusions.

IV. As to Paragraph IV, it is admitted that certain employees of Defendant who were “tipped employee[s]” (as such term is defined in 29 U.S.C. § 203(t)) received a portion of their wages in the form of tips, as expressly permitted pursuant to 29 U.S.C. § 203(m)(2)(A)(ii). Defendant denies Plaintiff’s mischaracterization that “tipped employees” who lawfully receive a portion of their wages through tips, as expressly permitted under the FLSA, are therefore paid less than the federal minimum wage. Except as expressly admitted, Paragraph IV is denied.

V. The allegations of Paragraph V are denied.

VI. The allegations of Paragraph VI are denied, as they constitute conclusions of law to which no response is required. Moreover, Defendant denies Plaintiff’s mischaracterization that *all* “tip pools” are subject to the referenced statutes and regulations, as the United States Department of Labor itself states that “a tipped employee may voluntarily share tips with whichever co-workers the tipped employee chooses.” *United States Department of Labor Field Operations Handbook (Chapter 30, Section 30d04(g))*.

VII. As to Paragraph VII, Defendant denies that a voluntary tip-sharing arrangement that existed between certain of its employees somehow violated the FLSA. Further answering Paragraph VII, while Defendant is not obligated to reimburse its employees who voluntarily chose to share some of their tips with their co-workers, which is expressly permitted by Plaintiff as noted above, Defendant nevertheless offered to do so on two (2) separate occasions in the months before Plaintiff’s initiation of this litigation, and Plaintiff never rejected either offer. The remaining allegations of Paragraph VII are denied.

VIII. The allegations of Paragraph VIII, which erroneously reference multiple “Defendants,” are denied by Defendant.

IX. The allegations of Paragraph IX, which erroneously reference multiple “Defendants,” are denied by Defendant.

X. As to Paragraph X, it is admitted that Defendant is currently, and has been at certain times previously, an employer subject to applicable portions of the FLSA. Except as expressly admitted, the allegations of Paragraph X are denied.

XI(A). As to Paragraph XI(A), Defendant denies that Plaintiff is entitled to any relief of any nature.

XI(B). As to Paragraph XI(B), Defendant denies that Plaintiff, or through Plaintiff any individual identified in Appendix A to the Complaint, is entitled to any relief of any nature.

XI(C). As to Paragraph XI(C), Defendant denies that Plaintiff is entitled to any relief of any nature.

Defendant denies each and every allegation in Plaintiff’s Complaint, except as expressly admitted or otherwise stated above.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff’s Complaint fails to state a claim against Defendant upon which relief may be granted and therefore should be dismissed, in whole or in part.

SECOND AFFIRMATIVE DEFENSE

All actions related to the individuals identified in Appendix A to the Complaint that were taken by Defendant were reasonable, lawful, and made in good faith, and Defendant has at all times relevant to this matter complied with applicable requirements of the FLSA.

THIRD AFFIRMATIVE DEFENSE

Plaintiff’s claims for violations of the FLSA, which have been and are again denied, are barred because all actions taken with respect to the individuals identified in Appendix A to the

Complaint were in conformity with the law, including currently effective written regulations of the Department of Labor.

FOURTH AFFIRMATIVE DEFENSE

Even if Defendant's conduct had violated the FLSA, which has been and is again expressly denied, Plaintiff would not be entitled to liquidated damages because Defendant acted at all times in good faith, had no knowledge of any alleged purported violation of the FLSA, and did not show reckless disregard for whether its alleged conduct violated the FLSA.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, based upon the doctrines of waiver, laches, ratification, and estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Defendant reserves its rights to amend its Answer to assert additional affirmative defenses in this action as may be revealed during discovery or upon receipt of additional information.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant prays as follows:

1. That Plaintiff have and recover nothing of Defendant;
2. That Plaintiff's Complaint be dismissed with prejudice;
3. That judgment be entered in Defendant's favor;
4. That Defendant have and recover its costs incurred and to be incurred in defending this action, including without limitation reasonable attorneys' fees; and
5. That Defendant have and recover such other and further relief as the Court may deem just and proper.

Respectfully submitted this the 19th day of July, 2019.

s/ Philip M. Van Hoy

Philip M. Van Hoy, N.C. Bar No. 5869

s/ C. Grainger Pierce, Jr.

C. Grainger Pierce, Jr., N.C. Bar No. 27305

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, and that the same was duly served upon Plaintiff in accordance with the provisions of Rule 5 of the Federal Rules of Civil Procedure via electronic service through ECF, as follows:

Jeremy K. Fisher
Office of the Solicitor
United States Department of Labor
61 Forsyth Street, S.W.
Room 7T10
Atlanta, GA 30303

This the 19th day of July, 2019.

s/ C. Grainger Pierce, Jr.
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